

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the)	NOTICE OF AMENDMENT
amendment of ARM 24.11.101,)	AND ADOPTION
24.11.204, 24.11.206,)	
24.11.315, 24.11.316,)	
24.11.440, 24.11.441,)	
24.11.443, 24.11.445,)	
24.11.450A, 24.11.451,)	
24.11.454A, 24.11.461,)	
and the adoption of NEW RULE I,)	
all related to unemployment)	
insurance laws)	

TO: All Concerned Persons

1. On February 9, 2006, the Department of Labor and Industry published MAR Notice No. 24-11-200 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, all relating to unemployment insurance laws at page 284 of the 2006 Montana Administrative Register, issue no. 3.

2. On March 3, 2006, the department held a public hearing in Helena regarding the above-stated rules. No comments were received from the public. One written comment was received prior to the closing date of March 20, 2006.

3. The department has thoroughly considered the comment received. The following is a summary of the comment received and the department's response to the comment:

COMMENT 1: A comment was received regarding the amendment to ARM 24.11.461 which lists specific acts of misconduct that disqualify an individual from receiving unemployment insurance benefits. The addition to the rule in (d) adds the following definition of misconduct to the list: "false statements made as part of a job application process, including, but not limited to deliberate falsification of the individual's work record, educational or licensure achievements." The comment asserted that the language of the reasonable necessity statement following the proposed rule could be read to add an additional element of proof which is not included in the language of the rule itself. The statement indicated the new definition is intended to address situations where the "worker submitted falsified information during the job application process and the worker was advised of the consequences of submitting false information during the application process." The comment pointed out that the reasonable necessity statement suggests an employer would have to prove that the employee made false statements and also prove that the employee was advised during the application process of the consequences of submitting false information.

RESPONSE 1: The department agrees that this issue should be clarified. The department did not intend by virtue of the reasonable necessity statement to add an element of proof. Rather, the department intends that to prove this form of misconduct, an employer need only prove a false statement was made by an employee. The department believes that the language of the proposed rule itself is clear and that any confusion is only due to the improper implication in the reasonable necessity statement. The department considers this response as the only action needed to clarify the meaning of the rule.

4. After consideration of the comment, the department has amended the above-stated rules exactly as proposed.

5. The department has adopted NEW RULE I (ARM 24.11.447) exactly as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 27, 2006.